

I. M. asks the Utah Labor Commission to review Administrative Law Judge Marlowe's decision regarding Mrs. M.'s claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12 and §34A-2-801(3).

BACKGROUND

Mrs. M. was injured in a fall while working for Gunnison Market on April 13, 2003. Gunnison Market and its insurance carrier, Workers Compensation Fund (referred to jointly as "Gunnison" hereafter), accepted liability under the Utah Workers' Compensation Act for Mrs. M.'s work-related injuries and paid some medical and disability benefits. Then, on December 23, 2003, Mrs. M. filed an application with the Commission to compel Gunnison to pay additional benefits for injuries which Mrs. M. described as a torn rotator cuff and 3 herniated cervical discs. Gunnison responded by admitting liability for the rotator cuff injury, but denying liability for the alleged cervical spine injury.

Judge Marlowe held an evidentiary hearing on Mrs. M.'s claim on August 31, 2004. During the course of that hearing, both Gunnison and Mrs. M., through her attorney, requested that Judge Marlowe refer the medical aspects of the claim to a medical panel. On August 1, 2005, Judge Marlowe complied with the parties' request and referred the claim to a medical panel. The panel submitted its report on November 9, 2005.

Mrs. M. filed objections to the report, alleging that: 1) Gunnison had withheld a vocational report and the video showing the severity of Mrs. M.'s injury; 2) the opinions of physicians hired by Gunnison were biased in favor of Gunnison; 3) some of the medical evidence related to Mrs. M.'s daughter, rather than to Mrs. M.; 4) the opinions of Mrs. M.'s personal physicians were entitled to greater weight than the panel's opinion; and 5) Mrs. M.'s back pain was not the result of preexisting injuries.

In her decision issued on March 21, 2006, Judge Marlowe ruled on Mrs. M.'s objection to the medical panel's report, and also ruled on the merits of Mrs. M.'s underlying claim for additional benefits.

- With respect to Mrs. M.'s objections to the medical panel report, Judge Marlowe concluded that the report should be admitted into evidence and that Mrs. M.'s objections were relevant only as to the weight to be given to the report.
- As to the merits of Mrs. M.'s claim, Judge Marlowe accepted the medical panel's opinion that Mrs. M.'s alleged cervical injuries and related syndromes were not medically caused by her accident at Gunnison. On that basis, Judge Marlowe awarded benefits for the admitted rotator cuff injury, but denied benefits for the other alleged injuries.

ISSUE PRESENTED FOR REVIEW

In requesting Commission review of Judge Marlowe's decision, Mrs. M. argues that: 1) because the medical evidence presented by the parties to Ms. Marlowe did not establish a dispute over the cause of Mrs. M.'s cervical injuries, that issue should not have been referred to a medical panel; and 2) the medical panel's conclusion that Mrs. M.'s cervical injuries were not caused by her work accident lacks adequate foundation and analysis and is contrary to the weight of other more persuasive medical opinion.

DISCUSSION

Mrs. M.'s current argument that Judge Marlowe should not have appointed a medical panel in this matter is directly contrary to Mrs. M.'s request at hearing that such a panel be appointed. The Commission therefore rejects Mrs. M.'s argument that Judge Marlowe erred in appointing the panel.

Mrs. M. also argues that the medical panel's opinion lacks foundation and analysis and, therefore, lacks sufficient probative value to outweigh the opinions of Mrs. M.'s treating physicians. In considering this argument, the Commission has carefully reviewed the medical panel's report. The Commission notes that the panel was comprised of two respected experts in neurology and orthopedics who have served on many of the Commission's medical panels.¹ The medical panel had significant advantages over other physicians who had treated or examined Mrs. M., in that the panel had access to all Mrs. M.'s relevant medical records, diagnostic studies, and opinions of other treating and examining physicians. The medical panel also had the opportunity to examine Mrs. M. herself. Based on all this information, the panel expressed the following opinion:

The panel members agree that the cervical component of [Mrs. M.'s] symptoms is not causally connected to the industrial accident. In reaching this conclusion, we note that her examination is not credible, the clinical course of subjective pain is atypical for a cervical injury, and while there are MRI findings, these are not necessarily related at all to the injury.

On the other hand, some of Mrs. M.'s personal physicians, notably Dr. Inouye and Dr. Gaufin, express their view that Mrs. M.'s cervical problems and other syndromes are the result of her accident at Gunnison. While these opinions are entitled to careful consideration, they do not provide the collegial, dispassionate and comprehensive evaluation that is provided by the medical panel. On balance, the Commission finds the medical panel's opinion persuasive.

In summary, the Commission concludes that Judge Marlowe properly referred this matter to a medical panel, and then correctly relied on the panel's opinion in limiting Mrs. M.'s workers' compensation benefits to her rotator cuff injury.

1. The Commission is unaware of any reason to believe that these experts are biased in favor of insurance companies, nor has Mrs. M. provided any evidence in support of her allegation of such bias.

ORDER

The Commission affirms Judge Marlowe's decision and denies Mrs. M.'s motion for review.
It is so ordered.

Dated this 7th day of June, 2006.

R. Lee Ellertson
Utah Labor Commissioner